



# FloorPrep

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Legislative Digest

Wednesday, February 16, 2000

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J.C. Watts, Jr.  
Chairman  
4th District, Oklahoma

*House Meets at 10:00 a.m. for Legislative Business*

***Anticipated Floor Action:***

**Motion to Go to Conference on H.R. 1714 (Electric Signatures in Global and National Commerce Act—E-SIGN)**

**H.R. 2366—Small Business Liability Reform Act**

\* \* \*

**Motion to Go to Conference on H.R. 1714 (Electric Signatures in Global and National Commerce Act—E-SIGN)**

**Floor Situation:** The House is expected to consider a motion to go to conference on H.R. 1714 as its first order of business today. A motion to instruct may be made immediately after this request and before the chair appoints conferees. Instructions are considered the prerogative of the minority and are debatable for one hour.

**Summary:** The motion, if agreed to, will establish a House-Senate conference to resolve differences between of H.R. 1714, which passed the House by a vote of 356-66 on November 9, 1999, and the Senate version (S. 761), which passed by unanimous consent on November 19, 1999. Once agreed to, the motion permits the chair to appoint conferees. Details of a possible motion to instruct were unavailable at press time.

**Views:** The Republican Leadership strongly supports the motion to go to conference and opposes any motion to instruct conferees that would weaken the position of House negotiators.

**Additional Information:** See *Legislative Digest*, Vol. XXVIII, #33, November 5, 1999.

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## H.R. 2366—Small Business Liability Reform Act

**Floor Situation:** The House will consider H.R. 2366 after it appoints conferees on H.R. 1714. Yesterday, the Rules Committee granted a structured rule that provides one hour of general debate, equally divided between the chairman and ranking minority member of the Judiciary Committee. The rule makes in order a committee amendment in the nature of a substitute as base text. In addition, the rule makes in order four amendments, each debatable in the order listed and for the amount of time specified below. The rule waives all points of order against the amendments. The chairman of the Committee of the Whole may postpone votes and reduce the voting time on a postponed vote to five minutes, so long as it follows a regular 15-minute vote. Finally, the rule provides one motion to recommit, with or without instructions.

**Summary:** H.R. 2366 contains several measures to limit the product liability of small businesses (defined as a business with fewer than 25 employees). Specifically, the bill:

- \* caps punitive damages at \$250,000 or three times compensatory damages (whichever is less) in any civil lawsuit against small businesses. To receive damages, plaintiffs must demonstrate through “clear and convincing evidence” that the defendant acted with willful misconduct and was flagrantly indifferent to the rights and safety of others;
- \* exempts small business defendants from joint and several liability (*i.e.*, the rule that each defendant may be held individually liable for total damages) for non-economic damages, such as pain and suffering. Under the bill, defendants will be liable *only* for the proportion of the judgment that corresponds to their percentage of actual fault; and
- \* exempts retailers, renters, and lessors (large and small) from legal responsibility for products they received from manufacturers—but did not alter—and which, subsequently, malfunctioned or caused damage.

The cap on damages will not apply in cases where the defendant’s misconduct (1) includes a violent crime, an act of international terrorism, a hate crime, or a sexual offense; (2) results in the destruction or loss of natural resources, or violates federal or state civil rights laws; or (3) was the result of the defendant’s being under the influence of drugs or alcohol. The measure also outlines exceptions that apply to liability protections for retailers: Retailers will be held joint and severally liable if they were negligent, engaged in intentional wrongdoing, or gave an additional warranty beyond the manufacturer’s. A retailer also may be sued if the manufacturer is bankrupt or, for some reason, could not be brought to court in the state.

CBO estimates that enactment will have no significant impact on the federal budget. The measure was introduced by Mr. Rogan *et al.*; the Judiciary Committee reported the bill by voice vote on February 1, 2000.

**Views:** The Republican leadership supports passage of the bill. President Clinton strongly opposes the measure and has threatened to veto it.

**Amendments:** As stated above, the rule makes in order the following four amendments to H.R. 2366, debatable for the amount of time specified and in the order listed:

**Mr. Hutchinson** will offer an amendment, debatable for 10 minutes, to permit a court to exceed the \$250,000 cap on punitive damages if it finds by clear and convincing evidence that the defendant acted with specific intent to cause the type of harm for which the action was brought. *Staff Contact: Stacey Shrader, x5-4301*

**Mr. Moran (VA)** will offer an amendment, debatable for 10 minutes, to clarify that the term “punitive damages” does not include civil penalties, civil fines, or treble damages (*i.e.*, three times compensatory damages) assessed or enforced by a government agency under federal or state statute. *Staff Contact: Pete Lawson, x5-4376*

**Mr. Watt** will offer an amendment, debatable for 10 minutes, to eliminate a provision in the bill that bars federal court jurisdiction over claims relating to interference with interstate commerce and antitrust. *Staff Contact: Steve Wall, x5-1510*

**Mr. Conyers** and **Mr. Scott** will offer an amendment, debatable for 40 minutes, to (1) modify the definition of “small business” to include businesses that had revenues in each of the last two years of \$5 million or less (currently, the bill defines “small businesses” as having fewer than 25 employees but does not mention revenue); (2) apply the bill’s product liability protections only to small business retailers (the bill currently protects both large and small retailers); (3) apply the bill’s cap on punitive damages only to cases related to product liability; (4) revise the bill’s definition of “hate crimes” to mean “a crime in which the defendant intentionally selects a victim—or, in the case of property crime, the property that is the object of the crime—because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person”; and (5) allow states to opt out of the federal cap on punitive damages and product liability protections through legislation or voter initiative. *Staff Contact: Perry Apfelbaum (Judiciary Committee, x5-6906)*

**Additional Information:** See *Legislative Digest*, Vol. XXIX, #3, February 11, 2000.

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